

REMARKS

Claims 1-35 are currently pending in the application. In the Office Action dated April 1, 2008, claims 1-35 were rejected. By this Amendment, claims 1, 18, and 32-35 have been amended, without acquiescence or prejudice to pursue the original claims in a related application. No new matter has been added.

Claim Rejections - 35 USC § 102

Claims 18-31 and 34-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Burgoon. (United States Patent No.: 5,706,510).

Claim 18 recites the following limitation “creating a first private symbolic link to reference the first version of the shared file, the first private symbolic link comprising link criteria that designates that members in a first group are authorized to use the first private symbolic link, wherein the first private symbolic link is used to perform a rolling upgrade in a computing system; and creating a second private symbolic link to reference the second version of the shared file, the second private symbolic link only applying to members of a second group associated with the second private symbolic link, wherein the second private symbolic link is used to perform the rolling upgrade in the computing system.” (Emphasis added). Burgoon fails to disclose the limitations as claimed.

According to the Final office action, Burgoon teaches updating the shared file system using the zymlinks. Then, the Final Office action incorrectly concluded that updating the system of Burgoon is the same as the rolling upgrade as claimed. An update is not the same as a rolling upgrade.

As stated in paragraph 3 of the specification as originally filed, a “rolling upgrade” refers to the process of performing software upgrades to a live existing software installation in a distributed environment in which the individual instances, nodes, or entities of the distributed system (referred to herein as “members”) are upgraded in a staggered manner.

The update of Burgoon allows whole trees of files to be updated using zymlink. Updating whole trees of files is not the same as the rolling upgrade as defined above.

Therefore, updating the shared file system using the zymlinks is not the same rolling upgrade. Therefore, Burgoon fail to disclose the rolling upgrade as claimed.

For at least these reasons and reasons stated in previous responses, Applicants submit that Burgoon fails to anticipate every limitation of claim 18. Because claims 34 and 35 share each of the limitations of claim 18 discussed above, they are not anticipated by Burgoon. Furthermore, because claims 19-31 depend from claims 18, 34 and 35, they also are not anticipated by Burgoon.

Claim Rejections - 35 USC § 103

Claims 1-17 and 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgoon in view of Earl et al. (United States Patent No.: US 6,966,058 B2).

Final Office action also states that Earl teaches sequentially loading and rebooting each of the plurality of nodes. However, this rolling upgrade process of Earl is not the process for the rolling upgrade as claimed. As clearly recited in the claims, there is no sequential rebooting of the nodes. It is the members within a node that are brought down and up in a staggered manner. The rolling upgrade of Earl reboots nodes and is silent with respect to bring up and down members within the node as claimed. Thus, the rolling upgrade of the claim is different than the rolling upgrade process of Earl.

For at least these reasons and reasons stated in previous responses, Applicants submit that Burgoon in view of Earl fails to teach or suggest every limitation of claim 1. Because claims 32 and 33 share each of the limitations of claim 1 discussed above, they are not rendered obvious by Burgoon in view of Earl. Furthermore, because claims 2-17 depend from claims 1, they also are not unpatentable.

CONCLUSION

Based on the foregoing, all remaining claims are in condition for allowance, which is respectfully requested. If the Examiner has any questions or comments regarding this response, the Examiner is respectfully requested to contact the undersigned at the number listed below.

To the extent that any arguments and disclaimers were presented to distinguish prior art, or for other reasons substantially related to patentability, during the prosecution of any and all parent and related application(s)/patent(s), Applicant(s) hereby explicitly retracts and rescinds any and all such arguments and disclaimers, and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

The Commissioner is authorized to charge Vista IP Law Group LLP Account No. **50-1105** for any fees required that are not covered, in whole or in part, and to credit any overpayments to said Deposit Account No. **50-1105**.

Respectfully submitted,

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